

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FEDERATED SERVICE INSURANCE
COMPANY, a Minnesota corporation,

Plaintiff-Counter-Defendant,

vs.

Case No. CIV-06-0638 JP/WDS

DANNY MARTINEZ,

Defendant/Counter-Claimant.

MEMORANDUM OPINION AND ORDER

On August 31, 2007, the Court filed a Memorandum Opinion and Order (Doc. No. 38) and a Partial Summary Judgment (Doc. No. 39) that granted, in part, Plaintiff Federated Service Insurance Company's Motion for Summary Judgment (Doc. No. 24) filed May 25, 2007, and denied Defendant/Counter-Claimant Martinez's Motion for Summary Judgment on the Issue of Uninsured Motorist Coverage and the Amount of Such Coverage Under the Federated Service Insurance Company Policy (Doc. No. 26) filed May 25, 2007. The Court concluded that Plaintiff's insured, Capitol Motor Company, effectively rejected uninsured motorist coverage for non-management employees like Defendant Danny Martinez when, (1) at the request of the general manager of Capitol Motor Company, Plaintiff executed a policy adjustment request that eliminated uninsured motorist coverage for non-management employees and (2) Plaintiff refunded to Capitol Motor Company a premium payment based on the reduction in coverage for non-management employees and (3) thereafter Plaintiff attached the

endorsement that eliminated coverage for non-management employees to each of Capitol Motor Company's yearly policy renewals.

Defendant/Counter-Claimant Danny Martinez appealed to the Court of Appeals for the Tenth Circuit which certified to the New Mexico Supreme Court the question of whether to be a valid rejection of uninsured motorist coverage "must that rejection be written, signed by the insured and attached to the policy?" The New Mexico Supreme Court ruled that an insurer, such as Plaintiff, must "obtain a written rejection of UM/UIM coverage from the insured in order to exclude it from an automobile liability insurance policy. . ." In essence, the New Mexico Supreme Court ruled that an oral direction by an insured to its insurer to reject certain uninsured motorist coverage is ineffective and that an insured must, in its own writing, reject the uninsured motorist coverage. Based on that ruling by the New Mexico Supreme Court, the Court of Appeals for the Tenth Circuit concluded that Capitol Motor Company did not effectively reject uninsured motorist coverage for non-management employees like Defendant/Counter-Claimant Danny Martinez, and remanded for proceedings consistent with its ruling.

In addition, the Court of Appeals for the Tenth Circuit ruled that the Plaintiff was barred, on remand, from providing additional written documentation – that would indicate that Capitol Motor Company had, in fact, made its own written request for exclusion of uninsured motorist coverage for non-management employees – to support its position in opposition to Defendant/Counter-Claimant's Motion for Summary Judgment. Under these circumstances, this Court cannot consider new written information that Plaintiff Federated Service Insurance Company now wishes to provide. Therefore,

IT IS ORDERED THAT:

1. Defendant/Counter-Claimant Martinez's Motion for Summary Judgment on the Issue of Uninsured Motorist Coverage and the Amount of Such Coverage Under the Federated Service Insurance Company Policy (Doc. No. 26) filed May 25, 2007 is granted; and
2. A separate Partial Summary Judgment in favor of Defendant/Counter-Claimant Danny Martinez on the issue of uninsured motorist coverage will be entered in accordance with FED. R. CIV. P. 58(a); and
3. Plaintiff Federated Service Insurance Company's Motion for Summary Judgment (Doc. No. 24) filed May 25, 2007 is denied.



James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE